

This letter discusses the Motor Fuel Tax provisions in regard to off-highway use of fuel. See 35 ILCS 505/13. (This is a GIL).

March 7, 2002

Dear Xxxxx:

This letter is in response to your letter received January 7, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are in the process of updating our taxability guidelines. Please provide us with a written response as to whether fue1 (gasoline, diesel, etc.) used or consumed in the following off-highway situations is subject to motor fuel or sales/use tax. Please specify whether the fuel used in these situations is eligible for exemption as off-highway usage. Please reference or include any applicable statutes or regulations. **Please assume that the taxpayer has the proper systems in place to track and support the quantity and type of fuel used in all situations.**

Industry #1 - Transportation (Contract or Common Carrier)

How should fuel used for the following situations be treated for tax purposes :

	<u>Fuel Subject To/Exempt From</u>
	<u>Sales/Use Tax Motor Fuel Tax</u>

Trucks

Idle Time

(truck idling on the shoulder of the highway)

Idle Time

(truck idling at a delivery, loading, or pick-up site)

Idle Time

(truck idling on a commercial establishment parking lot; example includes truckstops to rest)

Off-Highway Movement

(fuel consumed while driving to/from off-highway delivery, loading or pick-up sites; examples include rock quarries, coal mines, terminal grounds, etc.)

Off-Highway Movement _____

(fuel consumed while moving trailers around terminal grounds)

Power Take-Off Unit Usage (PTO) _____

(fuel used to activate the loader/unloader)

Off-Highway Unloading _____

(fuel consumed to activate the unloading process; when unloading a dump trailer, fuel is consumed to tilt the trailer as it unloads; when unloading a tank trailer, the product is unloaded by using fuel to power a forcing of air into the tank, which then forces the product through a hose into a delivery silo. These processes generally require an hour of operation)

Loaders

Loading Products Onto Trucks _____

(fuel used to move products around terminal grounds and load/unload trucks)

Industry #2 - Ready-Mix Cement Operations

How should fuel used for the following situations be treated for tax purposes:

Trucks

Idle Time _____

(truck idling at a delivery or loading site)

Off-Highway Movement _____

(fuel consumed while driving to/from off-highway delivery construction site)

Mixers on Trucks

Mixing (Manufacturing) _____

(fuel consumed to (propel) mix/manufacture the product while truck is moving or idling)

Loaders

Loading Products onto Trucks _____

(fuel used to load cement materials into mixers)

Procedural Questions

1. Please provide guidance as to the required information for support of exempt off-highway fuel utilization.
2. Is an exemption from applicable tax(es) allowed when purchasing the fuel for off-highway use or must tax be paid with a refund request filed on a periodic basis?
3. If tax has been paid on supported prior period off-highway fuel use, can the taxpayer obtain a refund? If yes, what is the refund period and refund process? Please include copies of refund request documents (i.e. forms, etc.)

We appreciate your assistance with this inquiry.

Section 2 of the Motor Fuel Tax Law, 35 ILCS 505/2, imposes a tax on “the privilege of operating motor vehicles upon the public highways and recreational-type watercraft upon the waters of this State.” Beginning January 1, 1990, the rate of tax imposed on all motor fuel used in motor vehicles operating on the public highways and recreational type watercraft is 19 cents per gallon. The tax on the privilege of operating motor vehicles which use diesel fuel is at the rate of 19 cents per gallon plus an additional 2 ½ cents per gallon.

“Motor fuel” is defined as “all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles. Among other things, ‘Motor Fuel’ includes ‘Special Fuel.’” “Special fuel” is defined as “all volatile and inflammable liquids capable of being used for the generation of power in an internal combustion engine except that it does not include gasoline as defined in Section 5, example (A), of this Act, or combustible gases as defined in Section 5, example (B), of this Act. ‘Special Fuel’ includes diesel fuel as defined in paragraph (b) of Section 2 of this Act.” “Diesel fuel” is defined as “any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark.”

Generally, Motor Fuel Tax is due when motor fuel is purchased. Persons other than distributors or suppliers who lose motor fuel through any cause or use motor fuel upon which the Motor Fuel Tax has been paid for any purpose other than operating a motor vehicle upon the public highways or waters, shall be reimbursed and repaid the amount so paid. See 86 Ill. Adm. Code 500.235. Distributors and suppliers may file claims for credit. See 86 Ill. Adm. Code 500.265. Section 13 of the Motor Fuel Tax Law sets forth the provisions for such reimbursement. No claims based upon idle time are allowed.

Please note, however, that beginning January 1, 2000, the State of Illinois implemented a dyed diesel fuel program. This program provides for tax-free purchases of dyed diesel fuel. Any special fuel sold or used for non-highway purposes must be dyed. Since the dyed diesel fuel is purchased tax-free, there is no need to apply for reimbursement of the tax. In some situations, it is not practicable for dyed diesel fuel to be used for off-road purposes. In that case, clear (undyed) diesel fuel may be purchased tax-paid for off-road use, but the purchaser must apply to the Department for a refund of the tax. Section 13 of the Motor Fuel Tax Law sets forth the situations in which the tax paid for clear diesel fuel may be reimbursed. The Department’s regulations at 86 Ill. Adm. Code 500.235 and 500.265 explain how claims for credit or refund may be made.

Since the beginning of the dyed diesel program, revisions have been made to the Motor Fuel Tax Law. P.A. 92-30 sets forth the most current terms of Section 13. The provisions of P.A. 92-30

and the Department's FY Bulletins 2000-3, 2001-29, and 2002-03 can be accessed on the Department's web site at www.revenue.state.il.us.

Also available on the Department's web site are forms for claiming credit/refunds of Motor Fuel Tax. For motor fuel distributors and suppliers there is form RMFT-5-X, Amended Return/Claim for Credit Motor Fuel Tax for Distributor/Suppliers. Form RMFT-11-A, Illinois Motor Fuel Tax Refund Claim for tax paid on or after January 1, 2001 and Form RMFT-11-B, Illinois Motor Fuel Tax Refund Claim for tax paid on or before December 31, 2000 are also available.

Sales tax would apply to all purchases of motor fuel unless there is an applicable sales tax exemption.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk